IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.142 OF 2006

Boon Catering Co.Pvt.Ltd. ...Petitioner
vs.
Union of India & Anr. ...Respondents

Mr.Madan i/b M/s.Mulla & Mulla & Craigie Blunt & Caroe for the petitioner
Mr.Samant for the respondents

CORAM:H.L.GOKHALE & A.S.OKA,JJ.
DATE : FEBRUARY 6,2006

P.C.:

1. Heard Mr.Madan in support of this Petition and Mr. Samant for the Respondents. The matter was heard for admission on earlier dates. A reply has been filed by the Respondents and the rejoinder has also been filed. Further an additional reply has been filed today. Granting ad-interim order would amount to disposing of the Petition at the admission stage. Hence, with the consent of both the Counsel we are disposing of the Petition at admission stage.

2. Rule. Rule is made returnable forthwith. Reply filed is to be treated as reply to the main Petition for hearing.

3. The Petitioner herein is having a contract of running a pantry car on railway train bearing Train No.5645-5646. This train leaves Dadar on Wednesday and finally reaches at Guwahati. The return journey starts from Wednesday and the

train comes back on Sunday. The contract of this train No.5645-5646 was awarded in the year 2002.

4. The case of the Petitioner is that in view of the catering policy of the Railway Board released in the year 2005, where the trains are having same originating and destination stations they are to be treated as one train unit though they may be following different routes with different numbers. The relevant part of Rule 6.2 (vi) reads thus:

> "....Trains having the same originating and destination stations (including Rajdhani/Shatabdi Express trains), but following different routes with different numbers and Rajdhani/Shatabdi trains running with advanced coaches (IRY/LHB etc.) which are given different numbers for conventional rakes (due to technical reasons), should be treated as one unit..."

5. Now another train is being started on the same route. The submission of the Petitioner is that in view of this policy, there is no occasion for the Railway Board to invite any bid for the catering contract of this train. Under this policy, there is a promise contained that the contract will be awarded to the existing party/contractor. Although the Petition is filed for seeking such a contract with respect to the two

trains, Mr.Madan on instructions has confined this Petition only to the train No.5645-5646.

6. Mr.Samant for the Respondents has on the other hand submitted that the train which is now being started was running on this very route earlier from 1991 and the contract thereof was awarded to a cooperative society. The contract of that society expired and the society having not sought any renewal, now the tenders are invited for that train. It is seen that this train is to start on Wednesday from Dadar and the return journey starts on Sunday. The submission of Mr.Samant is that this train which is being run from the year 1991 would not be said to be covered under this policy of 2005. Mr.Madan on the other hand pointed out that the contract has been awarded for the train No.5645-46 in the year 2002 and this contract is to subsist up to 31st December 2007 with further renewal clauses. In the meanwhile, this policy has come in the year 2005 and in view of the promise contained in that policy, Railways are estopped from advertising the tenders.

7. We see the force in the submission of Mr.Madan that the Railways are bound by the promise contained in the contract and the Railways are not expected to depart therefrom. In view of the declaration contained therein, the Railways cannot award this contract to any other party so long as there is

another subsisting contract with the Petitioner who is running the train on the same route on another day and of the same number.

8. In the circumstances, we allow this Petition and issue directions restraining the Respondents from proceeding any further with the award of the contract for this train which will be originating from Dadar from Saturday and later returning from Guwahati for the reason that the Petitioner is already having a contract for the train which is originating on Wednesday. It follows that the Railways will award the contract for this train to the Petitioner. This direction will be subject to the appropriate revision in the charges as provided under clause 4.3A and so long as the contract for the earlier train is subsisting. Rule is made absolute in above terms.

9. At this stage, Mr.Samant for the Respondents states that similar orders passed by Orissa High Court have been challenged by the Respondents in the Apex Court. He requests that this order be stayed. We direct that this order will remained stayed for a period of eight weeks from today.

(H.L.GOKHALE,J.)

(ABHAY S.OKA,J.)